

### § 240.3a4-3

### 17 CFR Ch. II (4-1-02 Edition)

with respect to a trust or fiduciary account:

- (i) When the account is opened;
- (ii) When the compensation arrangement for the account is changed; and
- (iii) When sales compensation, as defined in §240.3b-17, received from the account is reviewed by the bank for purposes of determining an employee's compensation; and

(3) The bank complies with Section 3(a)(4)(C) of the Act (15 U.S.C. 78c(a)(4)(C)).

(b) For purposes of this section, the term *year* means either a calendar year or other fiscal year consistently used by the bank for recordkeeping and reporting purposes.

[66 FR 27796, May 18, 2001]

#### **§ 240.3a4-3 Exemption from the definition of “broker” for bank effecting transactions as an indenture trustee in a no-load money market fund.**

A bank that meets the conditions for exception from the definition of the term “broker” under Section 3(a)(4)(B)(ii) of the Act (15 U.S.C. 78c(a)(4)(B)(ii)), except for the “chiefly compensated” condition in Section 3(a)(4)(B)(ii)(I) of the Act (15 U.S.C. 78c(a)(4)(B)(ii)(I)), is exempt from the definition of the term “broker” under Section 3(a)(4) of the Act (15 U.S.C. 78c(a)(4)) solely for effecting transactions as an indenture trustee in a no-load money market fund, as defined in §240.3b-17(f) and §240.3b-17(e), respectively.

[66 FR 27796, May 18, 2001]

#### **§ 240.3a4-4 Exemption from the definition of “broker” for small bank effecting transactions in investment company securities in a tax-deferred custody account.**

(a) A small bank is exempt from the definition of the term “broker” under Section 3(a)(4) of the Act (15 U.S.C. 78c(a)(4)) solely for effecting transactions in securities of an open-end management investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) in a tax-deferred account for which the bank acts as custodian under Section 3(a)(4)(B)(viii) of the Act (15 U.S.C. 78c(a)(4)(B)(viii)) if:

(1) The bank is not associated with a broker or dealer and does not have an arrangement with a broker or dealer to effect transactions in securities for the bank's customers;

(2) Any bank employee effecting such transactions:

(i) Is not an associated person of a broker or dealer;

(ii) Primarily performs duties for the bank other than effecting transactions in securities for customers; and

(iii) Does not receive compensation for such transactions from the bank, the executing broker or dealer, or any other person related to:

(A) The size, value, or completion of any securities transaction;

(B) The amount of securities-related assets gathered; or

(C) The size or value of any customer's securities account;

(3) The bank complies with Section 3(a)(4)(C) of the Act (15 U.S.C. 78c(a)(4)(C));

(4) The bank makes available to the tax-deferred account the securities of investment companies that are not affiliated persons, as defined in Section 2(a)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(3)), of the bank and that have similar characteristics to the securities of investment companies made available that are affiliated persons;

(5) The bank does not solicit securities transactions except through the following activities:

(i) Delivering advertising and sales literature for the security that is prepared by the registered broker-dealer that is the principal underwriter of an open-end management investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*), or prepared by an open-end management investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) that is not an affiliated person, as defined in Section 2(a)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(3)), of the bank;

(ii) Responding to inquiries of a potential purchaser in a communication initiated by the potential purchaser; provided, however, that the content of